IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1978

No. 77-1179

LAWRENCE J. STOCKLER, on his own behalf and on behalf of those similarly situated,
Appellant,

vs.

STATE OF MICHIGAN, DEPARTMENT OF TREASURY and STATE TREASURER,
Respondent.

On Appeal from the Supreme Court of the State of Michigan

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The Opinion of the Supreme Court of the State of Michigan is recorded at 402 Mich 802 (1977), denying leave to appeal from a Michigan Court of Appeals' Decision reported at 75 Mich App 640 (1977) both of which are set forth in the Appendix, infra, pages

JURISDICTION

The jurisdiction of this Court is envoked pursuant to 28 USC § 1257(2), this being an appeal which draws into question the validity of MCLA 208.1 et seq, infra, page .... on the grounds that it is repugnant to the Constitution of the United States.

This matter was commenced in the Circuit Court for

the County of Wayne, State of Michigan testing the constitutionality of Public Act No. 228 of 1975, being MCLA 208.1 et seq. In February, 1976 the Circuit Court for the County of Wayne, based upon Motion for Summary Judgment by the Defendant-Appellee State, and by Plaintiffs-Appellants, declared the Act constitutional in total. Appellants challenged the Act, inter alia, on the grounds that the tax was an unconstitutional tax on the right to engage in business as protected by the Fifth and Fourteenth Amendments of the United States Constitution. Thereafter, a Motion to by-pass the State Court of Appeals and to have this matter heard by the Supreme Court of the State of Michigan (the highest court of the state) was made timely. Despite no opposition by Appellees, the Supreme Court of the State of Michigan denied leave to by-pass on May 26, 1976 and similarly denied on July 14, 1976 Appellants' Motion for Reconsideration filed on June 7, 1976.

On appeal to the Michigan Court of Appeals, the Decision of the Wayne County Circuit Court was affirmed on May 16, 1977. The Supreme Court for the State of Michigan, the highest court for the State of Michigan, denied leave to appeal on November 23, 1977. Timely notice of appeal to this Court was filed in the Supreme Court for the State of Michigan on February 8, 1978. As the Supreme Court of the State of Michigan had explicitly and implicitly rejected Appellants' challenge to MCLA § 208.1 et seq, this matter is appropriately brought to this Court by appeal.

In the event that the Court does not consider appeal the proper mode of review, Appellants request that the papers whereupon this appeal is taken be regarded and acted upon as a Petition for Writ of Certiorari pursuant to 28 USC § 2103.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth, Fourteenth, Ninth and Tenth Amendments of the Constitution of the United States.

This case also involves Michigan Compiled Laws, 208.1 et seq, which states in Section 31(4):

> "The tax so levied and imposed is upon the privilege of doing business and not upon income."

and in Section 92:

> "The commissioner *may* utilize the services, information, or records of any other department or agency of the state government, including the withholding of state licenses or permits, in the performance of its duties hereunder, and other departments or agencies of the state government shall furnish the services, information, or records, and withhold issuance of licenses or permits, upon the request of the department." (Emphasis supplied.)

QUESTION PRESENTED

WHETHER MCLA 208.1 ET SEQ WHICH LEVIES AND IMPOSES THE TAX UPON THE PRIVILEGE OF DOING BUSINESS, VIOLATES THE FIFTH, FOURTEENTH, NINTH AND TENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES BY COVERTING THE RIGHT TO ENGAGE IN BUSINESS INTO A PRIVILEGE TO ENGAGE IN BUSINESS AND THEN TAXING THE SAME?

STATEMENT AND HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

This matter was commenced in the Circuit Court for the County of Wayne, State of Michigan testing the con-

stitutionality of Public Act No. 228 of 1975, MCLA 208.1 et seq, and was commenced in October, 1975, approximately ninety (90) days prior to the effective date of the Act (January 1, 1976), with the intent that this would allow the legislature time to take corrective action in the event the Act was declared unconstitutional. In essence, this is a declaratory action based upon the fact that the Plaintiff-Appellant, Individually and on behalf of the class which he represents, being all those engaged in business in the State of Michigan, had one of their rights, the right to engage in business, taken away from them and converted into a mere "privilege" to engage in business (Sec. 31) and requesting a guide for future conduct in view of the fact that the Act provided for (Sec. 97) the possibility of otherwise duly granted regulatory licenses being denied or revoked for failure to comply with this tax act, as well as facing other criminal actions resulting in incarceration and/or fine.

In February, 1976 the Circuit Court for the County of Wayne, based on Motion for Summary Judgment by the Defendant-Appellee, declared the Act constitutional in total. Appellants challenged the Act, inter alia, on the grounds that the tax was an unconstitutional tax on the right to engage in business as protected by the Fifth and Fourteenth Amendments of the United States Constitution. Thereafter, motion to by-pass the State Court of Appeals and to have this matter heard by the Supreme Court of the State of Michigan (the highest court of the state) was timely made. Despite no opposition by Appellees, the Supreme Court of the State of Michigan denied leave to by-pass on May 26, 1976 and similarly denied on July 14, 1976 Appellants' Motion for Reconsideration filed on June 7, 1976.

On Appeal to the Michigan Court of Appeals, the decision of the Wayne County Circuit Court was affirmed on May 16, 1977. Appellants contended that there is a right to engage in business rather than a mere privilege to engage in business, taking pains to distinguish the two concepts, and further argued that as the Single Business Tax Act takes a fundamental, inherent and natural right retained by the people, the tax is an unconstitutional tax on the right to engage in business as protected by the Fifth and Fourteenth Amendments of the United States Constitution as well as the Ninth Amendment.

The Court of Appeals then stated Appellants' contentions concerning the statute as it understood them:

> "Plaintiffs' argument within Issue I is two-fold. First, that it is the fundamental right to engage in business activity . . ."

and rejected this argument as follows:

> "The right or privilege of engaging in business is an important aspect of liberty, but it is not a fundamental right . . . Business and occupations may be regulated and taxed . . . In fact, business may be prohibited by the legislature pursuant to their police power . . .",

in upholding the constitutionality of this Act.

The Supreme Court of the State of Michigan, the highest court for the State of Michigan, denied leave to appeal on November 23, 1977 and thus adopted and approved the Court of Appeals' decision:

> "On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the appellant has failed to persuade the Court that the questions presented should be reviewed by this Court."

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

Appellants submit that the right to engage in intrastate business is just as much a right as the right to engage in intrastate commerce. Neither of these rights may be converted into privileges by the legislature without constitutional authority.

There is a very basic and fundamental distinction between classifying the act of engaging in business as a "privilege" as opposed to a "right". The word "privilege" has been defined in *Knoll Golf Club* v *US*, 179 F Supp 377 (DNJ, 1959) as:

> ". . . a particular benefit, favor or advantage. A right or immunity not enjoyed by all, or it may be enjoyed only under special conditions."

On the other hand, constitutional right has been defined as:

> ". . . a right guaranteed to the citizens by the Constitution SO GUARANTEED AS TO PREVENT LEGISLATIVE INTERFERENCE WITH THAT RIGHT." *Delaney* v *Plunkett*, 91 S.E. 561, 567; 46 G.A. 547 (1917) (Emphasis Added)

In *Carolene Products Company* v *Thompson*, 276 Mich 172, 178; 267 NW 608, 610 (1963), the Supreme Court of Michigan held that an individual had the constitutional right to engage in business:

> ". . . the Constitution guarantees to citizens the *general right* to engage in any business which does not harm the public. . . . The constitutional right to engage in business is subject to the sovereign police powers of the state to preserve public health, safety, morals or general welfare and prevent fraud." (Emphasis Added)

In reaching this conclusion, the Michigan Supreme Court was not making any great departure from past precedent, for the fundamental, inherent and natural right of an individual to engage in business has been recognized since the founding of our nation.

The Founding Fathers of our nation recognized this principle. In the Declaration of Independence they state:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and pursuit of happiness."

Their writings reveal that among these "unalienable rights" was the right to engage in business. The Virginia Declaration of Rights, drafted by George Mason declared that:

> "All men by nature are free and independent and have certain *inherent rights* of which, when they enter into a state of society, they cannot by an compact, deprive or divest their posterities; namely the *enjoyment of life and liberty, with the means of acquiring or possessing property,* and pursuing and obtaining happiness.[1] (Emphasis Added)

The Founders also revealed their considerations of the nature of the rights they sought to enshrine in both the Declaration of Independence and the Constitution: rights that come from God and not government. John Adams wrote: "Rights that cannot be repealed or restrained by human laws—rights derived by the great legislature of the universe."[2] George Washington wrote that we should forever respect "the eternal rules of order and *right* which heaven itself has ordained."[3] Moreover, James Madison believed that "the equal right of every citizen is the free

[1] Morrison, The American Revolution, Sources and Documents 149 (1929)
[2] Published in Boston Gazette in August, 1765; Umbreit, *Founding Fathers* 114 (1941)
[3] Farewell Address; Commager, Documents of American History 169-75 (1938) (Emphasis Added)

exercise of his religion according to the dictates of conscience as held by the same tenure with all our other rights.'"[4]

Liberty to Thomas Jefferson included the right to labor and to enjoy the products of one's labor, while to James Madison and others, this right was included in the term "property" which was also considered a natural right:[5] property "embraces everything to which the man may attach a value and have a right; and which leaves to everyone else the like advantage . . . man has property in his opinions and a free communication of them. He has the peculiar value of his religious opinions, and in profession and practice dictated by them. He has property very dear to him in the safety and liberty of his person. *He has an equal property in the free use of his faculties and free choice of the objects of which to employ them.*'"[6]

THIS COURT HAS REPEATEDLY RECOGNIZED THE RIGHT OF AN INDIVIDUAL TO PURSUE ANY LAWFUL BUSINESS OR VOCATION, SUBJECT TO THE POLICE POWERS OF THE STATE. In his concurring opinion in *Butcher's Union etc.* v *Crescent City, etc.*, 111 US 746, 756-7; 4 F Ct 652, 660-661; 28 L Ed 585 (1884), Justice Bradley wrote:

> "Governments are instituted among men, deriving their just powers from the consent of the governed. Among these unalienable rights, as proclaimed in that great document [Declaration of Independence] is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with

[4] Brant, James Madison, Virginia Revolutionary 249 (1941)
[5] Antieau, *Natural Rights and the Founding Fathers—The Virginians*, 17 Wash & Lee L Rev 43 (1960)
[6] 6 The Writings of James Madison 101 (Hunt ed 1906) (Emphasis Added)

> the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment.
>
> The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all like upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, . . . , and is an essential element to that freedom which they claim as their birth right.
>
> It has been well said that the *property of which every man has his own labor, . . . so it is the most sacred and inviolable.*" (Emphasis Added)

In *Truax* v *Raich*, 239 US 33, 34; 36 S Ct 7, 10; 60 L Ed 131 (1915), this Court summarily noted:

> "It requires no argument to show that the *right to work for a living* in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure." (Emphasis Added)

In *Adams* v *Tanner*, 244 US 590; 37 S Ct 662; 61 L Ed 1336 (1917), this Court wrote:

> "In *Allgeyer* v *Louisiana*, 165 U.S. 578, 589; 41 L Ed 832, 835; 17 Sup Ct 427, we held invalid a statute of Louisiana which undertook to prohibit a citizen from contracting outside the state for insurance on his property lying therein because it violated the liberty guaranteed to him by the Fourteenth Amendment. The liberty mentioned in that Amendment means not only the right of the citizen to be free from mere physical restraint of his person as by incarceration, but the term is deemed to embrace the *right* of the citizen to be free in the enjoyment of all his faculties; *to be free to use them in all lawful ways; to live and work where he wills; to earn his livelihood by*

> *any lawful calling;* to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to the carrying out to a successful conclusion the purposes above mentioned." P. 594 (Emphasis Added)

This Court in *Greene* v *McElroy,* 360 US 474, 79 S Ct 1400; 3 L Ed 2d 1377 (1959) cited a long string of cases in recognizing that within "liberty" and "property" concepts of the Fifth Amendment is the *right* to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference.

The Supreme Court of the State of Michigan has also recognized the individual's constitutional *right* to engage in business. In *Carolene Products Company,* supra, the Michigan Supreme Court held:

> "The Constitution guarantees the citizens the general *right* to engage in any business which does not harm the public . . . *The constitutional right to engage in business* is subject to the sovereign police power of the state to preserve public health, safety, morals or general welfare and to prevent fraud." P. 178 (Emphasis Added)

Carolene Products Company, supra, has been accorded approval by the Michigan Court of Appeals repeatedly.

This Court has also recognized the *right* to engage in business. In *Adams* v *Tanner,* at Page 665 of Sup. Ct. Reporter, supra, this Court in citing *Murphy* v *California,* 222 US 623; 56 L Ed 1229; 32 S Ct 697, stated:

> "*The Fourteenth Amendment protects the citizen in his right to engage in any lawful business,* but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from

> prohibiting any business which is inherently vicious and harmful . . . We are of the opinion [the statute] is arbitrary and oppressive in that it unduly restricts the liberty of appellants, guaranteed by the Fourteenth Amendment, to engage in a useful business. It may not therefore be enforced against them." (Emphasis added)

Accordingly, it is Appellants' contention that the act of doing or engaging in business is not a privilege, but rather is a constitutional right recognized by the Founding Fathers as a *natural, fundamental and inherent right* and a right which has been enshrined in both the Declaration of Independence and the Fourteenth Amendment—a right which has been repeatedly recognized by both this Court and the Michigan Supreme Court. Appellants contend that the *right* to engage in business may be regulated but may never be converted into a "privilege". *Jack Cole Company* v *MacFarland,* 337 SW2d 453 (1960) dealt with a tax upon the "privilege" of receiving income (Tennessee did not have an income tax). The Tennessee Supreme Court held that the right to receive income and earnings is a *right* belonging to every person, and therefore, the right could not be taxed as a privilege, further stating that though it cannot be denied that the legislature can name any privilege a taxable privilege and tax it, *the legislature cannot name something to be a taxable privilege unless it is first a privilege.*

The tax in this matter, the Single Business Tax, is a tax upon "the privilege of doing business". MCLA 208.31. Appellants submit then that the Single Business Tax is unconstitutional and invalid by legislatively converting the fundamental, inherent, and natural right of engaging in business (though subject to regulation under the police

powers) into a privilege in contravention of the Fourteenth Amendment.

While Appellants would submit and agree that the right to work and the right to engage in business, pursuant to the authorities cited heretofore, are subject to reasonable regulations under the police powers granted to the state, the State of Michigan through the Single Business Tax Act and as construed by the Michigan Court of Appeals (the Michigan Supreme Court denied leave to appeal), now states it is only a privilege to engage in business in the State of Michigan. As "privilege" refers to a peculiar benefit or advantage that may not be enjoyed by all, the clear implication is that the State may deny its citizens the right and ability to earn a livelihood—though there is no question that citizens have the right to work. There, futher, can be no question that each citizen has the right to decide in what capacity he wishes to work—either as an employee or as self-employed. However, if there is now only a privilege to engage in business, a privilege which impliedly may be denied, there remains only the right to earn a livelihood by being an employee. This raises at least two serious and haunting questions. First, whether the sole remaining right to be an employee can then be made into a privilege with the attendant power of the state to deny that privilege; and secondly, whether the remaining right to be employed can be abridged by either denying any person the "privilege" of engaging in business or denying those engaged in business the "privilege" of hiring people. However farfetched these questions may seem, we point to *Grosjean* v *American Press Company,* 297 US 233; 56 S Ct 444; 80 L Ed 660 (1936) where this Court recognized that the tax in question in that case, if declared valid, could ultimately be increased to such a high degree that it would result in destroying both

advertising and circulation of newspapers and magazines—an unwarranted and unconstitutional abridgement of First Amendment rights. Appellants submit that if the State has the power to convert the right to engage in business into a privilege, then by analogy it must also have the power to make it merely a privilege to work, a privilege to be employed—certainly unconstitutional acts.

Other effects of converting into a privilege the right to engage in business can be readily seen. Appellants do not contend that entrance into certain occupations or professions may not be regulated pursuant to police powers of the state (such as licensing) nor is it contended that businesses may not be required to comply with various regulatory statutes and ordinances; however, it is submitted that with compliance with these various statutes, ordinances and licensing requirements, there is an absolute right to go into business. While it may be only a privilege to practice law, a privilege afforded to only those who meet the various licensing requirements, does not the person duly licensed to practice law then have the right to engage in the business of practicing law? Does not the duly licensed doctor have the right to engage in the business of the practice of medicine? If not, how do these licensed individuals have the right to earn a livelihood in their chosen and licensed profession? See *Chilvers* v *People,* 11 Mich 43, 49 (1862):

> "The object of a license is to confer a *right* that does not exist without a license."

Similarly, does not the farmer have the right to engage in the business of farming? If not, what else can he do with his land. As an example, while the Agricultural Adjustment Act of 1938, 7 USCA § 1281 et seq. sets quotas on the amount of tobacco that an individual farm may produce, the Act does not prohibit the farmer from growing tobacco

in any amount desired. It merely subjects, pursuant to Section 1314, the purchaser of such tobacco produced in excess of the quota to a fine. Nothing prohibits the farmer himself from producing. Does not the common carrier, upon obtaining the necessary licenses and permits, have the right to engage in its business? The Michigan legislature, through the Single Business Tax Act, as construed by the Michigan Court of Appeals, a decision the Michigan Supreme Court denied leave to appeal, would answer "no", stating that while the duly licensed lawyer can practice law, he may not engage in the business of the practice of law; That the duly licensed doctor can practice medicine but he may not engage in the business of the practice of medicine. That the farmer can farm his soil but may not engage in the business of farming, ad infinitum. Clearly this is not what is intended by the United States Constitution or by the rulings of this Court.

As such, it is clear that the decision of the Michigan Court of Appeals (from which the Michigan Supreme Court denied leave to appeal) is incorrect in its application of the general proposition that business and occupations may be regulated and taxed. There is no contention here that business and occupations may not be regulated and there is no contention that the *activities* of business and occupations may not be taxed. The issue is solely whether the right to go into business, subject to the police powers granted to the state, may be legislatively converted into a privilege and then taxed. Appellants further do not take issue with the general proposition that a business may be prohibited by the legislature pursuant to the police powers. However, Appellants submit that such a prohibition must have a just relation to the protection of the public within that legislative power (to preserve public health, safety,

morals or general welfare and prevent fraud). See, for example, *Adams* v *Tanner,* supra. Though the decision of the Michigan Court of Appeals would so infer to the contrary,

> "[T]he police power of the state is not unlimited and is subject to judicial review, and when exerted in an arbitrary or oppressive manner, such laws may be annulled as violative of rights protected by the Constitution. . . . The legislature, being familiar with local conditions, is primarily the judge of the necessity of such enactments . . . [however] if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of legislative power, the act must fail." *McLean* v *Arkansas,* 211 US 539, 547-8; 29 S Ct 206; 53 L Ed 315 (1908).

At no time have the Appellees argued, much less shown, that the conversion of the right to go into business into the "privilege" of engaging in business was necessary for the protection of the people of the State of Michigan.

If regulation infers mere privilege, then by analogy, for example, there is merely a "privilege" to vote, a "privilege" of free speech, a "privilege" of the press, a "privilege" to trial by jury, for each of these RIGHTS is not unfettered and each is subject to regulation and control to some extent. Such is clearly not the case.

Appellants suggest that the assertion by the Appellees that there is a "privilege" to engage in business is a confused extension of the principles set forth by this Court in *Flint* v *Stone Tracy Co.,* 220 US 107, 31 S Ct 342; 55 L Ed 389 (1910) and as repeated in *Lehnhausen* v *Lakeshore Auto Parts,* 410 US 356, 93 S Ct 1001; 35 L Ed 2d 351 (1973) wherein the court dealt with a tax on corporations for the privilege of engaging in business. In *Flint,*

supra, this Court held that corporations, not being natural entities, but rather being organized pursuant to the laws of the various states, could be taxed on the privilege of engaging in business, and that it was not a denial of equal protection that corporations could be taxed on the "privilege of engaging in business" while natural persons engaged in the same business were not so subjected. The Court suggested that the "tax on the privilege of doing business" was, in actuality, a tax on the privilege of using the corporate form to engage in business—thus the tax being, in effect, a corporate franchise tax rather than a tax on the privilege of doing business (Under such an analysis, the Single Business Tax Act may well be valid and constitutional as to corporations).

Perhaps the relation between rights and privileges can best be analyzed through the Ninth and Tenth Amendments of the Constitution of the United States. The Ninth Amendment, which has been used very rarely in relation to other amendments, states as follows:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. "

while the Tenth Amendment states as follows:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Tenth Amendment indicates that "power" is that abstract concept which allows the federal or state governments to function. For example, in *In Re Brewster Street Housing Site in City of Detroit,* 291 Mich 313 (1939), the Michigan Supreme Court held that the constitutionality of federal legislation depends on provisions in the federal Constitution which expressly or by necessary implication

grant Congress power to enact the legislation, whereas the unconstitutionality of state legislation depends on provisions in the state Constitution limiting the legislatures' power to act. While the federal government's sovereignty is expressly or implicitly set forth in the Constitution of the United States, the state government's sovereignty is limited only expressly by the state Constitution.

On the other hand, the Ninth Amendment clearly states and clearly recognizes that there are an infinitesimal number of rights retained by the people. That is, that the framers of the Constitution, in their zeal to protect the individual rights of the citizens, felt compelled to make clear that the rights enumerated in the Constitution were not the sole rights retained by the people—that the enumeration of rights would not be one of limitation. It is quite obvious that the framers of our Constitution were quite concerned about the possibility that the government would use and abuse its powers to the detriment of the rights of the people, and felt compelled to set forth in writing, in the *Bill of Rights,* to remind both the federal and state governments that the people have retained their rights, including those not enumerated—rights including the right to engage in business—which cannot be infringed upon.

No State May Impose A Tax Upon The Exercise Of A Constitutional Right.

The Michigan Court of Appeals in asserting that Appellants' argument was "that there is a 'fundamental right to engage in business activity' " cited the general proposition that business and occupations may be regulated and taxed to conclude that there is a "privilege" to engage in business and not a right. From this conclusion, the Michi-

gan Court of Appeals, and the Michigan Supreme Court in denying leave to appeal, construed the Single Business Tax Act as a constitutional tax on Appellants' right to engage in business activities.

Appellants contend that the Michigan Court of Appeals' (and thus the Michigan Supreme Court's) decision is a multifaceted error. First, the Court misconstrued and misstated Appellants' arguments. The argument all along has been that there is a fundamental, inherent and natural *right* to engage in business. Second, the courts failed to recognize the difference between a right and a privilege. Third, the courts failed to recognize the inherent differences between and interconnection of the inherent right to engage in business as opposed to the power of the state by its police power to regulate those businesses. These three errors have been discussed previously and need not be discussed further at this point.

The Michigan Courts, however, made on additional error while holding the Single Business Tax Act constitutional —finding that the state has the power to tax the exercise of constitutional rights. Appellants contend that this is in direct conflict with the decisions of this Court. Appellants contend that the exercise of their constitutional right to engage in business is not subject to the taxing powers of the state. It is only subject to the legitimate police powers of the state regulation.

The Michigan Court of Appeals cited several cases to support its opinion that the "privilege" of engaging in business is a taxable privilege. None of these cases, however, stand up under scrutiny. *C. F. Smith Co.* v *Fitzgerald,* 270 Mich 659; 259 NW 352 (1975), while called a privilege tax, was in actuality a regulatory license tax—a nominal license "tax" regulating chain stores (it should be noted

that the Michigan Supreme Court in *C. F. Smith Co.* v *Fitzgerald,* supra, noticed the difference between a right and a privilege: ". . . the object of a license is to confer a *right* that does not exist without a license." citing *Chilvers* v *People,* supra, and *Youngblood* v *Sexton,* 32 Mich 406 (1975).

The Michigan Court of Appeals also cited the case of *Union Trust Co.* v *Wayne Probate Judge,* 125 Mich 487, 84 NW 1101 (1901) which held that taxes "upon privileges or civil rights held and exercised by sanction of laws" were permissible. To the extent that this case may be read as holding that a State may tax the exercise of a right guaranteed by the Federal Constitution, it is clearly an aberration and contrary to explicit holdings by this Court as well as by the Michigan Supreme Court and the courts of other various states. In *Union Trust Co.* v *Wayne Probate Judge,* supra, the tax in question was an inheritance tax and based "upon the proposition that inheritance is not a natural right, but a creature of the statutes and the bounty of the public." P. 491. Language referring to the power of the state to tax business and occupations was purely dicta and in any event, referred to regulatory license "taxes". In the case at bar, we deal with neither a regulatory license tax nor a tax on a statutorily provided privilege. Rather, the Single Business Tax is a tax upon the natural, inherent and fundamental constitutional right to engage in business (though subject to the police powers granted to the state). The concurring opinion of Justice Grant in *Union Trust Co.,* supra, makes it clear that the Michigan Supreme Court was dealing with a tax not upon a natural right but rather a privilege. The Single Business Tax, however, is a tax upon a natural right and not a privilege.

It is also clear that taxes upon the exercise of a constitutional right is clearly impermissible. In *Murdock* v *Pennsylvania*, 319 US 105; 63 S Ct 870; 87 L Ed 1292 (1943), this Court struck down as unconstitutional a license tax levied and collected as a condition to the pursuit of religious activities, whose enjoyment is guaranteed by the First Amendment:

> "We do not mean to say that religious groups and the press are free from all financial burdens of government . . . We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher, it is quite another thing to exact a tax on him for the privilege of delivering a sermon. The tax imposed . . . is of flat license tax, the payment of which is a condition of the exercise of these constitutional privileges.[7] The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. *Magnano Co.* v *Hamilton*, 292 US 40, 44-45.
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> • • •
>
> It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax—a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

Similarly, this Court in *Grosjean* v *American Press Co.*, supra, declared unconstitutional a license tax for the privilege of engaging in the business of selling advertising to be printed or published in certain magazines, newspapers, etc.—2% of the gross receipts of such business, stating that:

[7] Mr. Justice Douglas should be forgiven for himself mislabeling First Amendment Rights as "privileges". Notice that he refers to "right" in the last sentence.

> "The states are precluded from abridging the freedom of speech or of the press by force of the due process clause of the Fourteenth Amendment . . . We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution . . . The word 'liberty' contained in that amendment embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well. *Allgeyer* v *State of Louisiana*, 165 US 578, 589, 17 S Ct 427; 41 L Ed 32 P. 243 to 244."

See also *Harper* v *Virginia Board of Elections*, 383 US 663 (1966) wherein the Virginia Poll Tax was declared an unconstitutional conditioning of the right to vote, thus violating the equal protection clause of the Fourteenth Amendment. In *Harper*, supra, this Court noted that though the right to vote in state elections is nowhere expressly mentioned, such right is implicit.

Appellants acknowledge that the Federal Constitution does not explicitly grant the right to engage in business, however, contends that the right is implicit by virtue of the Fifth Amendment, the right to engage in business being property. See 16 Am Jur 2d, Rights Respecting Business or Occupations § 371, pp. 700, 703.

Appellants submit therefore, that the Michigan Court of Appeals' decision has upheld an unconstitutional taxa-

tion of Appellants' right to engage in business, a fundamental, inherent and natural right protected by the Federal Constitution. The tax, like those struck down in *Murdock, Grosjean* and *Harper,* supra, burdens Appellants' rights to to engage in business as protected by the Fifth and Fourteenth Amendments. As was stated in Murdock, supra, a state may not impose a charge for the enjoyment of a right guaranteed by the Federal Constitution. "Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as a privilege." *Jack Cole Co.* v *MacFarland,* supra at 456.

Finally, Plaintiff contends that § 92 of the SBTA infringes on freedom of speech, US Const, art 1, Mich Const, art 5 § 5, and the right to counsel, US Const, Am 6, Mich Const, art 1, §20, in that the power to withhold a license amounts to a denial of those rights, especially in view of *Grosjean,* supra.

Section 92 provides:

> "The commissioner *may* utilize the services, information, or records of any other department or agency of the state government, including the withholding of state licenses or permits, in the performance of its duties hereunder, and other departments or agencies of the state government shall furnish the services, information, or records, and withhold issuance of licenses or permits, upon the request of the department." (Emphasis supplied.) MCLA 208.92; MSA 7.558(92).

Accordingly, the Single Business Tax Act must be declared unconstitutional.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,
/s/ LAWRENCE J. STOCKLER
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Attorney for Appellant

IN SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 23rd day of November in the year of our Lord one thousand nine hundred and seventy-seven.

Present the Honorable
THOMAS GIILES KAVANAGH,
Chief Justice,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
MARY S. COLEMAN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices

CR 20-259

LAWRENCE J. STOCKLER, on his own behalf and on behalf of those similarly situated,
Plaintiff-Appellant, COA 27624
v 59908 LC 75-083705-CZ
STATE OF MICHIGAN, DEPARTMENT OF TREASURY and STATE TREASURER,
Defendants-Appellees.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the appellant has failed to persuade the Court that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true

and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript thereform, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 23rd day of November in the year of our Lord one thousand nine hundred and seventy-seven.

/s/ CARLIN R. DAVIS
Deputy Clerk.

STATE OF MICHIGAN
COURT OF APPEALS
(May 26, 1977)

LAWRENCE J. STOCKLER, on his own behalf and on behalf of those similarly situated,

Plaintiff-Appellant,

v Docket # 27624

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, and ALLISON GREEN, State Treasurer,

Defendants-Appellees.

Before: M. J. Kelly, P.J., and J. H. Gillis and R. M. Maher, JJ., J. H. GILLIS, J.

Plaintiff appeals as of right the trial court's declaration upholding the constitutionality on the challenged grounds of the "single business tax act",[1] MCLA 208.1 *et seq.* MSA 7.558 *et seq.* This case has been presented to us on the following stipulated facts:

[1] Hereinafter the Single Business Tax Act will be referred to as the SBTA or the Act and Single Business Tax will be referred to as SBT.

"The plaintiff, Lawrence J. Stockler, is a resident of the Township of West Bloomfield, County of Oakland, State of Michigan, and is doing business at 1924 Guardian Building, Detroit, Michigan.

"That on the 8th day of October 1975, plaintiff commenced litigation in the Circuit Court for the County of Wayne seeking to have declared unconstitutional Act 228 of PA 1975, being know as the Single Business Tax Act.

"In response to plaintiff's complaint, the defendant filed a motion for summary judgment, an amended complaint was filed and thereupon motion for summary judgment was filed on behalf of the plaintiff as a count 1 and the parties respectfully submitted their issues to be determined by the trial court as a matter of law upon the briefs. On the 10th day of February, 1976, the trial court wrote its opinion denying plaintiff's motion for summary judgment as to count 1, and granting summary judgment as to defendants' motion for summary judgment on all counts. On the 20th day of February, 1976, the circuit court judge entered an order accordingly."

The SBTA is a new and experimental piece of legislation. No other state has a similar statute. We admit some confusion in trying to understand the various provisions and the economic theory of the SBTA. It has been analyzed as a "pseudo" value added tax in that it taxes what one has added to the economy in contrast to an income tax which taxes what one has derived from the economy. See, generally, Symposium The Michigan Single Business Tax Act, 22 Wayne L R 1017 (1976). The act provides for a "specific tax of 2.35% upon the adjusted tax base of every

person with business activity in this state which is allocated or apportioned to this state." MCLA 208.31(1); MSA 7.558 (31)(1). In short, the tax base is determined by adding back to federal taxable income certain items previously deducted, for example, wages paid and interest paid, and then substracting certain items included in federal taxable income, for example, interest and dividends received. MCLA 208.9; MSA 7.558(9). Certain deductions and exemptions are then subtracted to determine the adjusted tax base. MCLA 208.23; MSA 7.558(23), MCLA 208.35; MSA 7.558(35).

Plaintiff raises five issues, all challenging the constitutionality of the SBTA. As did the trial court, we will address each issue individually; however, before proceeding to do so we think it wise to make a few general comments and observations.

Statutes are presumed to be constitutional. When one contends that a statute is unconstitutional the burden rests on him to point out with specificity the provision of the constitution that is violated. *Huron-Clinton Metropolitan Authority* v *Boards of Supervisors of Five Counties,* 300 Mich 1, 12; 1 NW2d 430 (1942), *Young* v *Ann Arbor,* 267 Mich 241, 243; 255 NW 579 (1923). Our job is to decide the questions as they have been presented. It is not our job, but rather the legislators, to determine the wisdom and the policy reasons for imposing a particular tax. See *C F Smith Co* v *Fitzgerald,* 270 Mich 659, 670; 259 NW 352 (1935), and authorities cited therein.

The instant case was filed on October 8, 1975. The SBTA went into effect on January 1, 1976. Obviously, when the suit was commenced plaintiff had not as of yet been assessed. Thus, plaintiff's attack on the SBTA is facial. His arguments are superficial and general, often lacking the

support of even a hypothetical. We support a liberal view of declaratory judgments, GCR 1963, 521, *Kuhn* v *East Detroit,* 50 Mich App 502; 213 NW2d 599 (1973), *lv den,* 391 Mich 815 (1974), *Tax Questions as Proper Subject of Action for Declaratory Judgment,* 11 ALR2d 359, and note that in the present case, defendant has stated that it will meet the constitutional challenges "head on." However, it is necessary that there be a case or controversy for a declaratory judgment. GCR 1963, 521, *Washington-Detroit Theatre Co* v *Moore,* 249 Mich 673; 229 NW 618 (1930), *Kuhn* v *East Detroit, supra.* See also *United Public Workers of America* v *Mitchell,* 330 US 75; 67 S Ct 556; 91 L Ed 755 (1946).

As will become clear in the discussion of the individual issues, many of the challenges here presented are nonjusticiable. A decision as to those issues would be based on speculation. Should we decide those issues today, it would be an imposition on the legislature and would possibly impede future litigants who may well have a factual controversy. Accordingly, we will address the issues as they are raised and where the same are premature we will decline to render a decision.

I

Did the Trial Court Err in Ruling as a Matter of Law that the Michigan Single Business Tax Does Not Violate the Michigan Constitution by Imposing, Levying and Enforcing a Tax Upon the Privilege of Engaging in Certain Commercial, Business and Financial Activities in the State of Michigan?

Plaintiff's argument within issue one is twofold; first, that it is a fundamental right to engage in business activity

and therefore this right cannot be taxed and, second, that the SBT, not being specifically enumerated in the Michigan Constitution is invalid.

Plaintiff cites *Murdock* v *Pennsylvania,* 319 US 105; 63 S Ct 870; 87 L Ed 1292 (1943), in support of his contention that the right to engage in business is a fundamental right which cannot be taxed. Murdock distinguished first amendment activity from commercial activity and held that a tax could not be imposed on the privilege of engaging in the former. The right or privilege of engaging in business is an important aspect of liberty, but it is not a fundamental right. *Griswold* v *Connecticut,* 381 US 479; 85 S Ct 1678; 14 L Ed 2d 510 (1965), *Ferguson* v *Skrupa,* 372 US 726; 83 S Ct 1028; 10 L Ed 2d 93 (1963). Business and occupations may be regulated and taxed. *United States* v *Darby,* 312 US 100; 61 S Ct 451; 85 L Ed 609 (1941), *Steward Machine Co* v *Davis,* 301 US 548; 57 S Ct 883; 81 L Ed 1279 (1937), *Bay City* v *State Board of Tax Adtion,* 292 Mich 241; 290 NW 395 (1940), *C F Smith Co* v *Fitzgerald, supra, Union Trust Co* v *Wayne Probate Judge, supra.* In fact, business may be prohibited by the legislature pursuant to their police power. *Hadacheck* v *Sebastian,* 239 US 394; 36 S Ct 143; 60 L Ed 348 (1915).

We reprint the identical portion of *Young* v *Ann Arbor, supra,* that the trial court quoted in response to plaintiff's contention that taxes not specifically provided for in the Michigan Constitution are invalid.

> "A different rule of construction applies to the Constitution of the United States than the Constitution of a State. The Federal Government is one of delegated powers, and all powers not delegated are reserved to the States or to the people. When the validity of an act of congress is challenged as unconstitutional, it is necessary to determine whether the power to enact it has been expressly or impliedly delegated to congress. The legislative power, under the Constitution of the State, is as broad, comprehensive, absolute and unlimited as that of the parliament of England, subject only to the Constitution of the United States and the restraints and limitations imposed by the people upon such power by the Constitution of the State itself.
>
> " 'The purpose and object of a State Constitution are not to make specific grants of legislative power, but to limit that power when it would otherwise be general or unlimited.' " (Citations omitted.) 267 Mich 241, 243.

See also *Huron-Clinton Metropolitan Authority* v *Supervisors of Five Counties, supra, Bowerman* v *Sheenan,* 242 Mich 95; 219 NW 69 (1928), *Moore* v *Harrison, supra.*

Although the Michigan Constitution lists various types of taxes and limits thereto, Mich Const, art 9, § 3, §7, § 8, that list is not exhaustive. Other taxes may be enacted by the legislature provided the same are constitutionally firm. *Huron-Clinton Metropolitan Authority* v *Supervisors of Five Counties, supra, Walcott* v *People,* 17 Mich 68 (1868), *Enumeration in Constitutional Provision of Subjects of Tax as Exclusive of Power of Legislature to Add Other Subjects,* 100 ALR 859.

II

Does the SBTA Violate Equal Protection of the Laws Under the Federal and State Constitutions in that Plaintiff is Subjected to Pay Both the State Income Tax and

the SBT While Others (Corporations, Financial Institutions and Domestic Insurers) are Not Subject to State Income Tax Assessment?

Plaintiff argues that the operation of § 6 (1)[2] of the SBTA upon business persons not exempted from the state income tax is an arbitrary, capricious and unreasonable classification resulting in a denial of equal protection.

Our Supreme Court has held that the legislature may choose to exempt certain persons from taxation. *C F Smith Co* v *Fitzgerald, supra.* In *Lenhausen* v *Lake Shore Auto Parts Co,* 410 356; 93 S Ct 1001; 35 L Ed 2d 351 (1973), the United States Supreme Court held that a state constitutional provision exempting individuals from personal property taxes, and thus operating to impose such taxes on corporations and nonindividuals is not violative of equal protection. In summing up equal protection tests regarding taxation, the Court stated:

> "The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is an invidious discrimination. *Harper* v *Virginia Board of Elections,* 383 US 663, 666; 86 S Ct 1079; 16 L Ed 2d 169 (1966). Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. As

[2] "'Person' means an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, join venture, assotion, corporation, receiver, estate, trust, or any other group or combination acting as a unit." MCLA 208.6(1); MSA 7.558(6)(1).

stated in *Allied Stores of Ohio* v *Bowers,* 358 US 522, 526-527; 79 S Ct 437; 3 L Ed 2d 480 (1959):

> "'The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value..'" 410 US 356, 359-360.

The Court added:

> "There is a presumption of constitutionality which can be overcome 'only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.' * * * 'The burden is one the one attacking the legislative arrangement to negative every conceivable basis which might support it.'" 410 S 356, 364, quoting *Madden* v *Kentucky,* 309 US 83, 88; 60 S Ct 406; 84 L Ed 590.

Plaintiff has failed to sustain this burden. It appears that plaintiff's actual quarrel is that the act is oppressive. That may well be true; however, harshness does not render a tax unconstitutional. *C F Smith Co* v *Fitzgerald, supra, Moore* v *Harrison, supra.*

III

Did the Trial Court Err in Ruling as a Matter of Law that the Michigan Single Business Tax Does Not Violate the Constitutional Freedoms of Speech and Press, and the Constitutional Right to Counsel?

Plaintiff contends that § 92 of the SBTA infringes on freedom of speech, US Const, art 1, Mich Const, art 5, § 5, and the right to counsel, US Const, Am 6, Mich Const, art 1, § 20, in that the power to withhold a license amounts to a denial of those rights.

Section 92 provides:

> "The commissioner *may* utilize the services, information, or records of any other department or agency of the state government, including the withholding of state licenses or permits, in the performance of its duties hereunder, and other departments or agencies of the state government shall furnish the services, information, or records, and withhold issuance of licenses or permits, upon the request of the department." (Emphasis supplied.) MCLA 208.92; MSA 7.558(92).

Plaintiff's argument is premature. The section provides that the commissioner *may* direct the withholding of licenses, not that he must. As of this date, we do not know how this section will be utilized. It is possible that the withholding of licenses under this section within the context of a particular fact situation may be constitutionally void. It is equally possible that actions pursuant to this section will be reasonable and constitutionally sound. We will not partake in speculation as to what the commissioner will do. Nor will we presume that the commissioner will act so as to unconstitutionally infringe on one's fundamental rights. See *United Public Workers of America* v *Mitchell, supra.*

Plaintiff has demonstrated no facial constitutional violation nor has he presented actual facts tending to demonstrate how his rights have been infringed.

IV

Did the Trial Court Err in Ruling as a Matter of Law that the Michigan Single Business Tax as Applied Does Not Violate the Michigan Constitutional Prohibition Against a Graduated State Income Tax nor Result in Unconstitutional Double Taxation?

Article 9, § 7 of the Michigan Constitution provides:

> "No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions."

Plaintiff contends that the SBT is a tax on income and that the § 35 small business exemption amounts to a graduation of base.[3]

Section 31 states explicitly:

> "There is hereby levied and imposed a specific

[3] "For the 1976 tax year the first $34,000.00 of the tax base of every person, $36,000.00 for the 1977 tax year, and each year thereafter. * * * This exemption shall be reduced by $2.00 for each $1.00 that business income exceeds the amount of the exemption." MCLA 298.35(a); MSA 7.558(35)(a).

> tax of 2.35% upon the adjusted tax base of every person with business activity in this state which is allocated or apportioned to this state.
>
> • • •
>
> "The tax so levied and imposed is upon the privilege of doing business and not upon income." MCLA 208.31(1) and (4); MSA 7.558(31)(1) and (4).

We do not perceive the SBT as an income tax. Although federal taxable income is used as the starting point in computing the tax base, it is possible that a taxpayer may have no income and still be subject to the payment of the SBT. Other components of the tax base, *e.g.*, wages, include expenses incurred, a theory not synonomous with income taxes.

Assuming *arguendo* that the SBT is an income tax, it does not offend the constitutional prohibition against graduated income taxes. The rate is a flat 2.35%. The base does not become graduated merely because of exemptions or exclusions. *Kuhn* v *Treasury*, 384 Mich 378; 183 NW2d 796 (1971).

The SBT is a specific tax. The rule of uniformity is therefore inapplicable, *Shapero* v *Department of Revenue*, 322 Mich 124; 33 NW2d 729 (1948), *C F Smith Co V Fitzgerald*, *supra*, at 685-686, and we need not consider the issue of double taxation.

V

Did the Trial Court Err in Ruling as a Matter of Law that the Michigan Single Business Tax Does Not Violate the Interstate Commerce Clause of the Federal Constitution?

Plaintiff, relying on *Spector Motor Service, Inc* v *O'Connor*, 340 US 602; 71 S Ct 508; 95 L Ed 573 (1950), asserts that the SBTA is unconstitutional in that it taxes the privilege of engaging in interstate commerce in violation of the US Const, art 1, § 8. *Spector* was recently overruled by the United States Supreme Court. *Complete Auto Transit, Inc* v *Brady*, US ; S Ct ; L Ed 2d (1977) (45 L W 4259, 3-7-77).

The burden is upon plaintiff to demonstrate and prove the alleged infringement. He has failed to inform us exactly what activity he is engaging in that is illegally being subjected to the tax. Plaintiff's only quarrel is with the language of the statute, upon which we cannot reverse. *Complete Auto Transit, Inc* v *Brady*, *supra*.

In sum, plaintiff has presented no argument so as to persuade this Court that the SBTA is unconstitutional. No costs, a public question being involved.

(Title of Court and Cause)

Before: M. J. Kelly, P.J., and J. H. Gillis and R. M. Maher, JJ. — M. J. Kelly, P.J. (Concurring)

I concur in the result reached by the majority. As to issue Issue No. III however it is my belief that §92 of the SBTA is unconstitutional and will be so declared on procedural and substantive due process grounds if not on the grounds urged by plaintiff. Of course if the commissioner never exercises the authority conveyed by that section an actual controversy would never arise. It may be gratuitous to do so but for my part I would indicate so great an aversion to the tax collection power granted the commissioner under § 92 that I would summarily declare it unconstitutional. To offer up the power to a tax collecting czar to revoke a

doctor's, lawyer's, plumber's or foodhandler's licensing privileges in order to bludgeon the payment of a tax assessment, is an intolerable bureaucratic invasion of the peoples' rights, privileges and expectations. (Plaintiff's counsel estimated that there were 400 such licenses and permits listed in the indices in this State and although we have not audited that count it is unlikely he was far from wrong).

This prediction, for that is all it is, would have no effect on the remainder of the Act because of MCLA 8.5, the severability clause.

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

LAWRENCE, J. STOCKLER, on his own behalf and on behalf of those similarly situated,

Plaintiff-Appellant,

-vs-

STATE OF MICHIGAN, DEPARTMENT OF TREASURY and ALLISON GREEN, State Treasurer,

Defendants- Appellees.

Calendar No. 59908
COA: 27624
LC: 75-083705

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given that LAWRENCE J. STOCKLER, et al, the Appellant above-named, hereby appeal to the Supreme Court of the United States from the final Order of this Court entered in this action on November 23, 1977.

This appeal is taken pursuant to 28 USC § 1257.

/s/ LAWRENCE J. STOCKLER
(P 21042)
Attorney for Appellants
1924 Guardian Building
Detroit, Michigan 48226
(313) 964-6660

Dated: February 8, 1978